

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Marshall Sloan,
Petitioner

vs

Case No. C-1-01-390
(Beckwith, J.)

Harry Russell,
Respondent

ORDER

Petitioner, an inmate in state custody, filed this habeas corpus action challenging a prison disciplinary action stemming from his marijuana use and resulting in his placement in disciplinary control for eight days and local control for thirty days on the grounds that his due process rights were violated when he was not permitted to call witnesses or appeal the decision. (*See* Docs. 1, 6). On April 17, 2002, this Court issued an order adopting the magistrate's report and recommendation recommending that the petitioner's petition for habeas corpus pursuant to 28 U.S.C. § 2241 be denied. (Doc. 7). The Court also denied petitioner a certificate of appealability and leave to appeal *in forma pauperis*, certifying that an appeal of its order would not be taken in good faith. (*Id.*). On March 9, 2003, petitioner filed a motion for relief from judgment arguing that the decision of the Court of Appeals in *Dotson v. Wilkinson*, 300 F.3d 661 (6th Cir 2002) issued after the judgment in this case dictates a different outcome. (Doc. 9). The Court of Appeals withdrew the mandate in the *Dotson* case and subsequently issued an *en banc* decision, *Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003). On August 14, 2003, this Court denied petitioner's motion for relief from judgment, concluding that the *en banc* decision in *Dotson* does

not support petitioner's claims in his habeas corpus petition. (Doc. 18). On September 11, 2003, petitioner filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit from this Court's order entered on August 14, 2003, denying petitioner's motion for relief from judgment. (Doc. 20). This matter is now before the Court on petitioner's motion for leave to proceed *in forma pauperis* on appeal. (Doc. 21).

Pursuant to 28 U.S.C. § 1915(a), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. Since this Court has determined that the Sixth Circuit decision in *Dotson* does not support petitioner's claims in his habeas corpus petition, there appears to be no arguable legal basis justifying petitioner's challenge to the August 14, 2003 Order. Accordingly, the Court certifies that an appeal from such order is not taken in good faith for purposes of allowing petitioner to proceed on appeal *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See* Fed. R. App. P. 24 (a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Petitioner's motion for leave to proceed *in forma pauperis* on appeal (Doc. 21) is hereby DENIED. Petitioner remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See* Fed. R. App. P. 24 (a) (5).

Date: _____
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s/Sandra S. Beckwith
Sandra S. Beckwith, Judge
United States District Court

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